IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 287 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DILIPKUMAR B PATEL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR.A.D.SHAH, LD.COUNSEL for Appellant,
MS.PANDIT, ADDL.PUBLIC PROSECUTOR for Opponent,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 06/08/2007

ORAL JUDGMENT

The appellant has challenged the legality and validity of the judgment and order of conviction and sentence passed by the learned Sessions Judge,

Mehsana in Sessions Case No.157 of 1993 on 17th January, 1994. Three accused persons were tried for the offence punishable under Section 306 and 498 (A) of the Indian Penal code. The original accused No.2 and accused No.3 was father and mother of the present appellant respectively. The appellant was husband of the deceased-Rekha. However, the learned trial Judge has acquitted the original accused Nos.2 and 3 from the charges levelled against them. The respondent-State of Gujarat has preferred the acquittal appeal against two accused persons being Criminal Appeal No.616 of 1994. The Court is informed by Mr.Shah, learned Counsel for the appellant that the said acquittal appeal was taken up for hearing and dismissed vide judgment and order dated 23/07/1996.

2. Mr.Shah, has taken this Court through the evidence led by prosecution, so also, through the judgment and order under challenge. The judgment and order is assailed on various grounds mentioned in the memo of appeal. It is submitted that the learned trial Judge has committed grave error in appreciating the evidence led by prosecution to prove the alleged cruelty and the act of abetment to commit suicide which is punishable under Section 306 of the Indian

Penal Code.

3. On the other hand say of learned A.P.P., Ms.Pandit is that the learned trial Judge has assigned various reasons and has recorded its own finding. A detailed discussion has also been made as to why the version of the complainant should be believed and as to why certain answers given by the Panch Witness favouring the defence plea should not be given weightage. No good reasons are coming forth which can explain the act of suicide. If deceased-Rekha was feeling frustration then also it was the direct result of the ill-treatment given by the accused persons and mainly the present appellant. In short, the learned A.P.P., has made detailed submissions for dismissal of the present appeal.

4. To appreciate the rival side contention firstly the Court would like to state the prosecution case in brief. It is necessary to mention certain facts of prosecution case in detail as it would be relevant for determination of the present appeal because two accused persons facing similar charge of the offence punishable under Section 498 (A) have been acquitted and their acquittal has been upheld by

this Court.

5. It is the case of prosecution that on 22/03/1993 after 3:00 a.m., the deceased consumed poison known as 'Baygon' used for killing mosquito. Deceased-Rekha married to the present appellant prior to two years and nine months of the incident and she died at the residence of the accused (matrimonial home) at Town Kalol due to consumption of poison. The appellant was doing the business of selling clothes and clothing material. In the month of July, 1981, the original accused Nos.1 and 2 visited America for the purpose of heart treatment of accused No.2 and had returned from America prior to two weeks from the date of incident. Initially, the deceased and the appellant was staying at Kalol but after starting job as salesman, he started to live at Ahmedabad since December, 1991. Initially, the accused No.2 had left for America in the month of July, 1991. As the accused No.3 continued to stay at Kalol, the appellant and deceased were regularly visiting Kalol to meet the respondent-accused No.3, who was mother-in-law of the deceased. The accused No.2 thereafter had gone to U.S.A., in the month of February, 1992. So, after February, 1992, the

appellant and deceased-Rekha were staying at Ahmedabad. The respondents-accused No.2 and 3 returned from U.S.A., on 27/02/1993 and it is alleged by prosecution that deceased-Rekha made complaint against the conduct and behaviour of all the three accused persons, mainly the accused No.3-mother-in-law. It is the say of prosecution that in-laws of the deceased gave her mental torture by saying that she was not able to conceive to a child; she remained sick and due to sickness, she was not doing household work properly. She was also tortured by saying that she did not know how to do the household work. It is also the case of prosecution that appellant was demanding Rs.2 Lacks and was pressurizing the deceased to tell her father to give that much amount so that appellant can also visit to America. Deceased-Rekha often informed about the mental torture given to her at the hands of the respondents-accused and ill conduct of the respondents-accused to her mother, father (complainant) and paternal aunt-Sakriben. The appellant and deceased were staying on rent in the area of Ranip. Whereas, the parental home of deceased-Rekha was in the area of Vadaj. Both these area are comparatively nearer to each other. It is also the case of prosecution that

appellant used to visit Saurashtra Area for his business purpose, mainly the Rajkot City twice in a month. So, when the appellant was going out of head-quarter, that is, Ahmedabad, deceased-Rekha went to her parental home and when the appellant came back from Rajkot after completing his tour, he used to pick up deceased-Rekha with him from her parental home. It is further case of prosecution that after completing last visit of Saurashtra area, the appellant did not come to pick up deceased-Rekha and go to Kalol. So, deceased tried to contact the appellant and then realized that appellant directly went to Kalol instead of picking her from parental home. Thereafter, the complainant-Bhaktibhai took deceased-Rekha at Kalol on 21st March, 1993 and returned back to Ahmedabad at about 6:30 p.m. in the evening after persuading deceased and respondents-accused that they will consult a good doctor and examine deceased-Rekha. According to prosecution, on 22nd March, 1993, the complainant received a telephonic message that health of deceased-Rekha was serious and after consulting with close relatives, the complainant, Sakriben and one Govindbhai Ishwarbhai went to Kalol and found that dead-body of deceased-Rekha was lying on the back on floor and to

foam at the nose. Thereafter, the complainant on suspecting something wrong, went to Police Station and lodged the complaint. Initially, it was alleged by the complainant that her daughter was killed and she had consumed poison and muddamal bottle etc., was removed and destroyed. In the complaint, the complainant gave name of the appellant, as well as, original accused Nos.2 and 3, father-in-law and mother-in-law of the deceased. Case was investigated and on conclusion of the same, the charge-sheet came to be filed.

6. The learned Judge has discussed in detail and has held that this is a case of suicide and death of deceased-Rekha was unnatural. This part of the finding has not been challenged by Mr.Shah. The backbone of submission of Mr.Shah is that cruelty is not proved which is made punishable under Section 498 (A) of I.P.C. or any act of abetment which is made punishable under Section 306 of I.P.C. The complainant has attempted to implicate all the three persons of the family who were residing at Kalol. The day on which the appellant went on tour, deceased was at her parental home. It is in evidence that while the appellant was returned after completing his

tour, he used to go parental house of deceased-Rekha and to pick her. But on 20/03/1993 or prior thereto the appellant did not go to pick Rekha after returning from his last tour. It is not the say of either complainant or his wife, (father and mother of deceased) examined as witnesses that any persuasion was made before sending deceased-Rekha back at her in-laws house or any attempt was made to get assurance of good behaviour, keeping in mind the conduct of the appellants that they will not harass the deceased-Rekha any further.

7. This Court has gone through the judgment and order under challenge and it appears that the learned trial Judge has drawn certain inferences and has also attempted to interpret the tenor of evidence in a particular manner which has ultimately resulted into material error in appreciating the evidence keeping in mind the accepted principles of appreciation of evidence.

8. When the Court is dealing with the appeal preferred under the provisions of Section 374 read with Section 386 of the Code of Criminal Procedure, this Court can appreciate and re-appreciate the

entire set of evidence and record its own conclusion and according to me this is a case where evidence led by prosecution requires *denovo* appreciation and the Court should record a finding whether the prosecution has successfully established the charge of cruelty against the appellant or the charge of abetment punishable under Section 306 of the Indian Penal Code and for this purpose the evidence of three witnesses requires to be evaluated. One of them is the complainant-Bhaktibhai. The F.I.R. tendered in form of evidence obviously would help the Court in evaluating the evidence of the complainant because, Mr.Shah has pointed out certain material improvements made by the complainant at the time of recording his evidence before the Court and certain material contradictions of his version qua other witnesses examined by prosecution viz., the Panch Witnesses-Gopalbhai.

8.1 According to Mr.Shah, one pointed question was asked to the complainant that if Gopalbhai, Panch Witness, was present alongwith other persons at the time when he had been to Kalol to drop deceased-Rekha at her in-laws house. According to complainant and Prosecution Witness No.4, Sakriben Ishwarbhai, the

deceased was tortured and she had been living her matrimonial life under cruelty. But, if the evidence is evaluated and red minutely, according to these witnesses, the nature of cruelty was nothing but some quarrel over trifle issues and deceased was tortured that she was not able to conceive a child during marital life of more than two and half years. It is further say of these witnesses that the accused was demanding huge amount of money from the complainant under the pretext that the deceased-Rekha was given consistent medical treatment and the family of the appellant incurring regular expenses in providing medical treatment to the deceased. Deceased was also mentally ill-treated. However, the nature of mental cruelty was not specifically alleged. According to these witnesses, because of ill-treatment and mental cruelty, the deceased committed suicide on 22nd March, 1993 during night hours after about 3:00 a.m. Rs.2 Lac was demanded by the appellant for his visit to America.

9. From the above evidence following crucial facts which have emerged obviously shall have bearing on the ultimate finding recorded by the learned trial Judge because the prosecution is under obligation to

prove that there is a nexus between the act of suicide and the so-called mental or physical cruelty given to the deceased by the appellant. The accused Nos.2 and 3 had returned from U.S.A. prior to a month of the incident. Merely, because the accused Nos.2 and 3 were expressing their dissatisfaction as to the health of deceased while talking over telephone from U.S.A., to the appellant, it cannot be equated with cruelty and it would be difficult for the Court to attribute any role of appellant for such a conduct of original accused Nos.2 and 3. Most of the period, that is, the period between return of accused Nos.2 and 3 from America and the date of suicide, the deceased stayed at her parental home. Because, it is in evidence of these witnesses that when the appellant left for his tour to Saurashtra, he had dropped the deceased to her parental home and neither the complainant nor any prosecution witnesses who have been examined to prove physical and mental cruelty stated that after the day on which the appellant had dropped deceased at her parental home, so also, after the arrival of parents of the appellant from U.S.A., deceased had impeached the appellant. It is not in evidence that demand of Rs.2 Lac was made by the appellant after return of his

parents from U.S.A., and that demand was also repeated by the deceased when she came at her parental house, while the appellant had gone to his tour at last.

10. It is alleged that the appellant was demanding Rs.2 Lac on the ground that he intends to visit U.S.A., but whether this allegation should be accepted as gospel truth is a crucial question. Because it is in evidence that the appellant had never applied for passport or any visa under which capacity or status to visit U.S.A. Under which capacity or status the original accused Nos.2 and 3 visited U.S.A. has also not come on record and when the appellant had already a job in India, whether on the ground of ailment of accused No.2 the appellant could have arranged for his trip to U.S.A. It appears from the evidence that the appellant was the only son who was able to look after the original accused Nos.2 and 3. It is not the case that accused was demanding the amount saying that he intends to expand his business. It is also not the allegation that he had spent Rs.2 Lac in the treatment which he and the deceased were taking from the expert so that a child can be born. Therefore, the story of demand of Rs.2

Lac appears to be false or a story which is not capable of inspiring any confidence.

11. So far as the allegation as to mental cruelty given to the deceased on the ground that she was not able to conceive a child, the nature of evidence led indicates contrary version. It is clear from the documentary evidence led during the course of trial that appellant perhaps was the responsible for not conceiving a child by the deceased and therefore appellant was taking regular treatment. The percentage of sperm in the semen of appellant which is required to become a father of child were less and more than one document clearly reveals that no material improvement was found even after getting treatment in respect of percentage of sperm in the semen of the appellant. It is very likely that deceased was also asked to take treatment, so nobody in the society would come to know about the physical infirmity on part of the appellant. When a person is aware and conscious about the sickness and weakness of his own, would he ever taunted or tortured his wife for not conceiving a child, was the crucial question before the Court and it appears that the learned trial Judge has not addressed this question

in a proper way keeping in mind the documentary evidence collected and led during the course of trial. The facts pointed out and the suggestions made by the defence side need to be considered simultaneously with the evidence led by prosecution. Because the suggestions made to witnesses during the course of cross-examination are nothing but the touchstone to evaluate the truth. The accused would try to develop plea of defence. It is true that bare suggestion cannot be equated with the fact proved. The witnesses can deny hypothetical suggestion made by defence Counsel but denial of suggestion made to witnesses also requires to be evaluated and Court reach to the conclusion that denial of suggestion made by the defence side is a false denial. The Court can record a finding that denial is a valid denial. In the present case, of course the complainant has denied that Gopal was a person present when he had been to Kalol, but this Gopal himself has admitted that he was present and had participated in the discussion that had taken place between the complainant and the accused side. The selection of Gopalbhai as Panch Witness proves indirectly the status of Gopal as an independent person. It is not denied that this Gopal known to parties and was

neighbour of the accused. Undisputedly, this Panch Witness, Gopalbhai has admitted in his cross-examination that alongwith complainant-Bhaktibhai, he had gone to the house of Bholidasbhai-accused No.2, stayed there for about half an hour and after taking tea left the house dropping the deceased-Rekha there. The deceased-Rekha said to Bhaktibhai that she wanted to come back at Vadaj but Bhaktibhai denied her and asked her to stay there.

12. In the same way Prosecution Witness No.6, Kanubhai Vithhaldas, who has been examined at Exh.39, stated in his cross-examination that he had been to the house of deceased-Rekha and deceased told him that she was living happily and had no problem. For the sake of argument, if the favourable answers given by the Panch Witnesses are ignored even then it has come on record that the family of the appellant was financially sound comparing to socioeconomic status of the family of the complainant. It is in evidence that the appellant had returned from his tour on 20/03/1993. It is also in evidence that deceased-Rekha as well as complainant were expecting that the appellant would come to Ahmedabad and would bring Rekha at Kalol, as the parents of appellant were at

Kalol. If Rekha was not really happy at Kalol or accused Nos.2 and 3 were not treated her properly then whether the complainant-Bhaktibhai would have gone to Kalol that too with Rekha and would have insisted for her to stay at Kalol, is the crucial question which was required to be considered by the learned trial Judge. The conduct of this witness, complainant and close relative of the complainant like Sakriben is that they would insist that if the accused Nos.2 and 3 are interested in getting the treatment of ailment of deceased then they may come to Ahmedabad and stay with his son and Rekha would look after them but she would not go to Kalol where she was allegedly tortured in past.

13. Prosecution Witness No.3, Savitaben Bhaktibhai mother of deceased-Rekha, who has been examined at Exh.35 has stated in her deposition that married life of her deceased-Rekha was looking happy apparently but really she was not happy. Her daughter was being tortured, as she was not able to conceive a child. When it is not in evidence that parents of the deceased-Rekha was not aware about the sperm deficiency of appellant-accused then it is difficult for this Court to accept the say that

deceased was being tortured for not conceiving a child and the appellant was responsible to torture the deceased for this reason. In recent past of the incident, the accused and deceased were stayed together at Ahmedabad and the deceased had an opportunity not only to visit her parental home but had an opportunity to stay for longtime at her parental home while appellant was going on his business tour. The demand of Rs.2 Lac made by the appellant on 3rd March, 1993 from the mother of the deceased-Rekha is one another fact which is not found convincing because on that day the appellant had been to the house of his in-laws to drop Rekha and at that time he had demanded Rs.2 Lac so that he can visit to U.S.A. Such a grave fact obviously could have been told by mother of the deceased-Rekha to her husband, that is, father of the deceased, because it is the say of complainant-father of the deceased-Rekha that he was not personally present on 9th March, 2003. So, two grave facts when contradicted by the defence side and found proved through the deposition of Investigating Officer, the version of mother of the deceased-Rekha can be said to be an improved version to implicate the accused persons and mainly the appellant. She has admitted in her cross-examination

at paragraph 7 that in Police Statement she had not stated that married life of deceased was happy apparently, but really she was not happy. She has also admitted the suggestion made to her that in her statement she has not stated that she had told her son-in-law that they will arrange for money as and when the appellant intends to go to U.S.A. She has also admitted that she has not stated in her statement that when Rekha desirous to go to Kalol, Dilip had told her that his parents will not allow her to enter into the home. On the contrary the evidence gives impression that deceased-Rekha was not interested in going to Kalol and she was waiting for the appellant to go to her and both of them go to Vadaj. Undisputedly, there is evidence that father-in-law of deceased was in need of treatment of heart ailment of his wife. It is very likely that the appellant may have desired that Rekha should go to Kalol but perhaps the appellant has not gone to bring Rekha upon his returning from business trip. It clearly emerges from the plain reading of the evidence of Prosecution Witness Nos.1 and 3 that as the appellant had not gone to bring Rekha from her parental home, her father took her to Kalol and had insisted her to stay with her husband at Kalol

because mother-in-law of deceased-Rekha was required to be looked after due to heart ailment. So, the Court is of the view that evidence of these two witnesses have not been properly evaluated.

13.1 Similar is the situation of the evidence of Sakriben, Prosecution Witness No.4, examined at Exh.36. She is not an independent witness. Her husband was residing at U.S.A. On the date of her deposition, she was about 42 years of age and deceased-Rekha was daughter of her real brother. As per say of this witness, Rekha was visiting her house once in a month and she also used to visit alongwith the appellant. The evidence of this witness mainly unfolded the same story that have been to be stated by the parents of the deceased. This witness has stated that she was informed by the appellant about the illness of Rekha and appellant also informed her that he was trying to contact over telephone with the parents of deceased-Rekha. Her statement was recorded after two days from the date of complaint. She was present through out at village Vadu and her statement was also recorded at Village Vadu and if this witness was aware about the actual story, her statement could have been recorded immediately. So, version of this

witness is also found as partisan witness and it does not inspire any confidence. When two material witnesses examined by the prosecution are not found reliable then the version of this witness obviously would not help in carrying the prosecution any further.

14. It is in evidence that for some hours after midnight and prior to 3:00 a.m. before the deceased-Rekha committed suicide, the appellant and deceased-Rekha were talking with each other. So it is possible to infer that they must have discussed on some topic. But, it is difficult to assume or presume that on what topic they were discussing because some alternatives are emerging and it would not be either legal or proper to jump to a conclusion because it would be nothing but a surmises or conjectures. It is clear from the Panchnama of scene of offence and other facts that has emerged from record that appellant was not there in the very room where the deceased committed suicide. According to appellant, he had come out from the room and was sleeping outside the room because he was felling hot. The prosecution witnesses including the complainant have admitted that Rekha was also not keeping good health and she was being treated by the doctors. It is very

likely that a husband who met the deceased after several days had left the room after midnight that too under the pretext that he was feeling hot inside the room may have caused some anguish.

15. It is possible to infer that the deceased-Rekha must be knowing about the physical infirmity of the appellant for not becoming a father and she might have felt bad that why she was directly or indirectly paused to be a lady incapable of being conceived a child. Considering the various facts situation that have emerged, it is difficult for this Court to express agreement with the finding recorded by the learned trial Judge that the act of suicide committed by Rekha was the result of any overtact or in emotion on part of the appellant. If a husband is really cruel to his wife and intends to establish his supremacy then he would not have permitted his wife to stay with her parental home during his each tour. On the contrary the system developed by this couple, that is, deceased and the appellant pauses a picture which speaks about the maximum freedom that was given to deceased-Rekha by the appellant and the persons against whom actual grievance were also not in India for long and the learned trial Judge has acquitted

both of them. When the allegations against all the three accused are on similar pattern and two of them have been acquitted and their acquittal has been confirmed by this Hon'ble Court, then why the benefit of doubt was not given to the present appellant is also a question. So, taking the balancing view of the facts that has emerged this Court reaches to the conclusion that the finding of guilt of the appellant recorded by the learned trial Judge is erroneous. This is a case where the words uttered by the father of the deceased or Sakriben ought not to have been accepted as gospel truth because on touchstone of cross-examination these witnesses have not stood to the test. It is very likely that deceased may have opted to commit suicide under a total frustration that she would not be able to conceive a child that too no fault on her part.

16. The poison consumed by the deceased is not a special type of poison which requires to be purchased particularly from the market. It has come on record that the family of the accused was financially sound and therefore Baygon was kept in the house for domestic purpose and if one consumes Baygon, a person sleeping at a reasonable good distance or in a

separate room might not even getting a smell from it. No independent witness has been led from the neighbour of the appellant that something had committed wrong after the departure of complainant on 20/03/1992. So in couple of hours on returning to in-laws house, deceased-Rekha committed suicide. It is in evidence of the complainant that when they left Ahmedabad, the deceased had taken only one pair of cloth. It is true that two pairs of cloth were at her in-laws place but if the deceased was stay for long to look after her in-laws then she would have brought more clothes. So, it is very likely that as she was not permitted to go with her father, she might have felt bad.

17. For short it is risky to link the accused with the offence punishable under Section 306 of Indian Penal Code, as such there is no legal convincing evidence against the appellant-accused so far as offence punishable under Section 498 (A) of the Indian Penal Code is concerned. It is true that deceased had committed suicide within a period of seven years of her marital life but due to insufficient legal and convincing evidence, no presumption can be drawn to link the appellant with

the crime. This is not a case of dowry or ill-treatment on account of non-payment of money demanded by the appellant-accused. On the contrary it emerges from the evidence that to carve out a case against the appellant, a false story of demand of money from the in-laws of the appellant with a view to implicate the appellant is created.

18. So, by giving benefit of doubt to the present appellant keeping in mind the above aspect discussed herein above, the present Criminal Appeal is allowed. The judgment and order of conviction and sentence dated 17th January, 1994, rendered by the learned Sessions Judge, Mehsana in Sessions Case No.157 of 1993 is hereby quashed and set aside. The appellant is acquitted of the charge of offence punishable under Section 306 and 498 (A) of the Indian Penal Code. Fine, if paid by the appellant, is ordered to be refunded to him on proper identification.

19. Bail Bond executed by the appellant-accused shall stand discharged. Order and Direction accordingly.

(C.K.BUCH, J.)

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